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ABSTRACT

This paper provides a brief overview of collective bargaining in public education in Indiana in 1975, the second year that school boards and teachers operated under a collective bargaining law. The authors analyze major factors and apparent trends related to bargaining and impasse issues, mediation and fact-finding practices, teacher strikes, and provisions of negotiated contracts. Throughout their discussion, the authors frequently compare the bargaining practices observed in 1975 with those of 1974, the first year the collective bargaining law was in effect. (Author/JG)

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TEACHER NEGOTIATIONS IN INDIANA: THE SECOND FRUSTRATING YEAR

by

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A revised version of a paper presented at the National Conference of Professors of Educational Administration, Knoxville, Tennessee, August 1976.

This paper provides a brief overview of collective bargaining in public education in Indiana in 1975, the second year that school boards and teachers operated under a collective bargaining law.[1] The first year of bargaining under the law, 1974, had proven to be frustrating to both groups. Especially troublesome during 1974 were problems caused by the difference between "discussable" and "negotiable" items, the constraints on tax levies for schools as a result of frozen property tax rates, and the ostensible slowness of the Indiana Education Employment Relations Board in sending mediators to handle disputes.[2]

Bargaining and Impasse Issues

In 1975, 291 of the 305 districts in the state engaged in collective bargaining, an increase of 15 over the number the previous year.[3]

Tax levies still could not be increased and, consequently, financial issues predominated and led to several impasses. Many other issues, however, also resulted in impasses.

One such impasse was caused by representation issues. Impasses in this area, which declined 88 percent between 1974 and 1975, included unit clarification, the "twenty percent" petition for exclusive representation, decertification, majority recognition, and unit alteration. This decline could be expected since most of the serious representation issues had been resolved during the first year of bargaining.

Cases requiring mediation remained relatively stable, rising only eight percent above the number in 1974, while cases involving fact finding rose 62 percent. The increase in fact finding apparently was due to the desire of both teachers and boards to remove themselves from possible criticism for the final results attained during the collective bargaining process.

Cases involving unfair practices increased by 66 percent between 1974 and 1975. The major issue was refusal to bargain or to discuss on the part of the school board. In 32 cases, the issue was refusal to bargain; and in 25 cases, it was refusal to discuss. All these cases were based in whole or in part upon interpretations of "discuss" and "bargain." The remaining cases were varied: eleven involved allegations by teachers that boards unilaterally altered existing policies or proposals; eight involved charges of bad faith bargaining; four were concerned with charges of discrimination, intimidation, or interference; others involved refusal to meet with designated representatives, refusal to extend employment, refusal to provide information necessary to bargain, and contested recognition of a teacher organization.

The Discussable-Bargainable Issue

As noted, a majority of the unfair labor practice cases involved the issue of discussable versus bargainable items--in effect, the scope of bargaining. Such issues also strongly contributed to many demands for mediation and fact finding. Thus, even though several interpretative decisions had been rendered by the Indiana Education Employment Relations Board on the meaning of "bargain" and "discuss," there was much confusion. It was estimated that from 50 to 60 percent of disputes were related in some measure to scope of bargaining.[4] The legislature had provided for bargaining--that is, dealing with matters that had to be included in the written contract--on salary, wages, hours, salary- and wage-related fringe benefits, and grievance procedures that could culminate in final and binding arbitration of unresolved issues. Under the law, other matters could be discussed; but the school employer, the board, was not required "to bargain collectively, negotiate or enter into a written contract concerning, or be subject to or enter into, impasse procedures."[5] Discussable items

included working conditions, except insofar as they involved the financial issues noted previously as bargainable; curriculum development and revision; textbook selection; teaching methods; selection, assignment, or promotion of personnel; student discipline; expulsion or supervision of students; pupil-teacher ratio; and class size or budget appropriations. Any items included in agreements made between school districts and teachers the year prior to the collective bargaining law would continue to be bargainable, even if they fell under the discussable rubric.

Although most boards were satisfied with the distinction between discussable and bargainable, teacher organizations made strong attempts to secure open-scope bargaining. The Indiana State Teachers Association lobbied strongly for a change in the law, and succeeded in enlisting the mild support of the Republican governor and the strong support of the House Democratic majority leader and the House Republican minority leader. A bill which eliminated a large portion of the discussable items passed the lower house, but failed to receive approval in the Senate, where it was opposed by a majority of the Republicans and a substantial number of conservative Democrats.[6]

Public Law 254

Public Law 254 was passed in the 1975 Indiana General Assembly session. This collective bargaining law covered all public employees except teachers, college professors, policemen, firemen, and professional engineers. It granted open-scope bargaining to groups covered by the law and was to become effective on January 1, 1976.[7] However, on February 4, 1976, this law was ruled unconstitutional by a Benton County, Indiana circuit court. The court held that the provisions of Public Law 254 which attempted to bar judicial review were unconstitutional, and that it was beyond the power of the legislature to deny the right of judicial review of administrative decisions.[8]

Mediation and Fact Finding

The tendency increased for participants in bargaining to view mediation as merely a step toward fact finding. Moreover, the teacher organizations and the boards often continued to criticize the apparent slowness with which the Indiana Educational Employment Relations Board (IEERB) sent mediators and fact finders to cases. In 1974 the Board had assumed that certain issues could be settled before actual mediation by having a preliminary investigation. Teacher organizations--both the Indiana State Teachers Association and the Indiana Federation of Teachers--disagreed. The former organization sued the IEERB in order to end its investigative process. In June, 1975 a county circuit court of appeals upheld the suit and ordered the Board to cease its investigative practices.[9]

In addition to the six regular staff members, 38 different people were used as ad hoc mediators. The ad hoc mediators handled 117 mediation cases, and the staff handled 25. June was the peak case load for mediation, and most cases were completed by the middle of August. The average number of working days between the filing of a request for mediation and the sending of a mediator was 3.7 days. Of the 142 mediation cases, 73 went to fact finding, 4 were mediated after fact finding, and 1 was withdrawn. Of the cases settled by mediation, 2 were mediated by telephone, and 53 were mediated by the mediator in person. These results are summarized in Table 1.

Fact finding began in June and reached its peak in July. Fact finding cases took longer to close than mediation cases, chiefly as a result of the amount of time spent by fact finders in preparing the reports. Of the 111 fact finding cases, the ad hoc mediators handled all but one, and the time between the filing of a request for a fact finder and the sending of a fact finder constituted 3.9 working days. Of these cases, 33 were mediated

successfully by the fact finder, three were settled by the parties involved before the fact finding report was released, and 53 were settled by the parties after the report was released. In 14 cases the parties went back to mediation after the report was released. One case went to artitration, three were followed by a strike, and two were still unresolved in mid-1976.

Table 2 is presented to show the time spent in formal sessions during mediation and fact finding. The ad hoc mediators spent an average of 2.55 sessions mediating. For unsuccessful mediation the average time spent for this group was 2.72 sessions, with two sessions at the mode. IEERB staff members spent an average of 1.85 sessions in successful mediation and 2.27 sessions in unsuccessful mediation. During mediation, the ad hoc group was successful in 35.5 percent of its cases, while the IEERB staff was successful in 28 percent. As measured by number of sessions and success rate, the ad hoc panelists appeared to be functioning as well as the IEERB staff members during mediation.

Fact finders spent on the average 1.41 sessions hearing reports. Generally, the greater number of sessions in fact finding than in mediation was due to the fact finders' attempting mediation. The success rate in terms of both sides reaching agreement was 82 percent--91 cases out of 111.

Strikes

Although the law governing collective bargaining in public education prohibits strikes, five districts in 1975 had strikes. In 1974 there were no strikes. The major issue in virtually all the districts was that of money, although also of importance was evaluation, class size, preparation time, voluntary extracurricular duties, grievance procedures, and a maintenance of standards clause. In Fort Wayne, the largest of the districts involved in a strike, some 1,300 of approximately 1,600 teachers were on strike for three

TABLE 1

MEDIATION CASES

	Frequency	Percent
Mediated by telephone	2	1.4
Mediated by Mediator	53	37.3
Went to Fact Finding	73	51.4
Withdrawn	1	0.8
Mediated after Fact Finding	4	2.8
Mediated after previous mediation and Fact Finding	9	6.3
TOTAL	142	

FACT FINDING CASES

Mediated by Fact Finder	33	29.7
Settled by parties before report	2	1.8
Settled by parties after report	53	47.7
Went to Mediation after report	14	12.6
Settled after strike	3	2.8
Withdraw	2	1.8
Settled by parties before Fact Finder entered	1	0.9
Arbitration	1	0.9
Still in Fact Finding	2	1.8
TOTAL	111	

Source: Indiana Educational Employment Relations Board, Public Law 217: Statistical Analysis for 1976 (Indianapolis: The Board, 1976).

TABLE 2

TIME SPENT IN MEDIATION AND FACT FINDING

MEDIATION

SESSIONS	CASES SETTLED AD HOC	CASES SETTLED STAFF	CASES NOT SETTLED AD HOC	CASES NOT SETTLED STAFF
0 (phone)	1	2	1	
1	9	1	14	5
2	11	1	19	6
3	8	2	17	4
4	4		7	3
5	4		10	
6	1	1		
7			1	
TOTAL	38	7	69	18

FACT FINDING

SESSIONS	CASES SETTLED AD HOC	CASES SETTLED STAFF	CASES NOT SETTLED AD HOC	CASES NOT SETTLED STAFF
0 (phone withdrawn)	5			
1	61		12	
2	16		5	1
3	3		1	
4	4		1	
5	1 (by phone)			
6	1			
7	0			
TOTAL	91		19	1

Source: Indiana Educational Employment Relations Board, Public Law 217: Statistical Analysis for 1976 (Indianapolis: The Board, 1976).

days in September. In Lafayette 400 of 500 teachers struck for six days in October and November. In Marion some 340 of 400 teachers went out in early September for two and a half days. In Jennings all schools were closed when 82 percent of the 187 teachers went on strike for seven days in early October and, in Northwest Allen County, all schools were closed when 104 of 121 teachers struck during the second week of October.

The Negotiated Contracts

In non-economic benefits resulting from bargaining in 1975, there appeared to be no change in the basic power relationships between teachers and boards. In terms of money, the average increase between 1974 and 1975 for holders of Bachelors degrees, without increments, was 6.61 percent, and with increments, 9.19 percent. The average increase for holders of Masters degrees was 6.77 percent without increments and 9.51 percent with increments.

Range in base Bachelors degree salary was $7,300-$9,500 in the state in 1975; in top Bachelors, $14,550-$15,288; in base Masters, $8,050-$10,010; in top Masters, $11,720-$17,108.

Conclusion

The second year under the law proved as frustrating as the first year to participants. The limitations on tax levies did not allow salaries to rise as steeply as the cost of living, at least in the minds of teachers. Moreover, the discussable-bargainable distinction remained a barrier for teachers who expected to attain greater power in educational decision-making. In both cases the ultimate solutions lie not in bargaining itself but in the actions of the governor and the legislature. It is for this reason that both the Indiana State Teachers Association and the Indiana Federation of Teachers have not only accelerated their already active lobbying in the legislature but have prepared unprecedented political work in the coming elections. Furthermore, there

appears to be some evidence that the mediation process does not appear to be working well but that fact finding is gaining popularity.

Notes

1. Indiana, Code (1973), 20.7.5-1-1 to 20.7.5.-1-14 Indiana Public Law 217.

2. For a discussion of the problems in 1974, see: R.E. Munsterman and Roy R. Nasstrom, "Collective Bargaining in Indiana: A Year of Frustration." Paper presented at the National Conference of Professors of Educational Administration, Bozeman, Montana, August 1975. A revised version of the paper is included in American Association of School Administrators-National Academy of School Executives (Ed.), Program Notebook: Collective Bargaining in Education (Arlington, Virginia: AASA-NASE, 1976).

3. Much of the statistical information in this report is derived from: Indiana Educational Employment Relations Board, Public Law 217: Statistical Analysis for 1976 (Indianapolis: The Board, 1976).

4. Journal and Courier (Lafayette), November 3, 1975.

5. See Code.

6. The Indianapolis Star, January 27, 1976.

7. Indiana, Code (1975), 22.6-4-1 to 22.6-4-13, Indiana Public Law 254.

8. See Warren v. Indiana Telephone Co. (1940), 217 Indiana 913, 26 N.E. 2d 399 (due process requires judicial review of the orders of an administrative body); Coleman v. City of Gary (1942), 220 Indiana 446, 44 N.E. 2d 101 (jurisdiction of courts to investigate action of administrative agency is not dependent on statutory authorization); Metropolitan Dev. Commission of Marion County v. Cullison (1972), - Ind. App. -, 277 N.E. 2d 905 (beyond power of legislature to deny the right of judicial review of an administrative decision); Joseph E. Seagram & Sons, Inc. v. Bd. of Com'rs., etc. (1943), 220 Ind. 604, 45 N.E. 2d 491; Slentz v. City of Fort Wayne (1954), 233 Ind. 226, 118 N.E. 2d 484 (legislature cannot deny courts their inherent power to review actions of

administrative agency); and Article I, Sec. 12 of the Indiana Constitution (every man, for injury to person, property or reputation, has a remedy by due course of law).

9. Indiana State Teachers Association v. Indiana Educational Employment Relations Board (Marion County Circuit Court, Indianapolis, Indiana, 1975).